

STATE OF NEW YORK

THE STATE TAX COMMISSION

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In the Matter of the Applications

of

GROLIER, INCORPORATED

For revision of the combined franchise taxes for the years 1954, 1955, 1957, 1958 and 1959 under Article 9-A of the Tax Law.

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Grolier, Incorporated, the taxpayer herein, having filed applications for revision of combined franchise taxes for the years 1954, 1955, 1957, 1958 and 1959 under Article 9-A of the Tax Law, and a hearing having been held in connection therewith at the office of the State Tax Commission in New York City on January 28, 1966, before William F. Sullivan and John J. Genevich, Senior Tax Administrative Supervisors of the Corporation Tax Bureau of the Department of Taxation and Finance, at which hearing J. E. Goyden, controller of the taxpayer, appeared personally and testified, together with Gordon W. McKean, vice president and general counsel, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) That for the years 1954 and 1955, permission was granted under the provisions of Section 211.4 of the Tax Law for the filing of reports on a combined basis, including the taxpayer and its wholly-owned subsidiaries, Americana Corporation and Catskill Craftsmen, Inc; that for the years 1957, 1958 and 1959, another wholly-owned subsidiary, The Richards Company, Inc., was permitted to be included in the combined reports;

(2) That the taxpayer for the years involved in this hearing, filed consolidated corporation income tax reports with the United States Treasury Department, which included other corporations in addition to those included in the New York combined reports;

(3) That the taxes were audited and stated, as follows:

	<u>1954</u>	<u>1955</u>		<u>1957</u>	<u>1958</u>	<u>1959</u>
Combined entire net income	\$995,409.63	\$1,376,587.33		\$1,340,958.22	\$3,692,431.07	\$5,683,840.60
Combined business allocation	39.39134%	37.51536%		29.67924%	26.45431%	29.75342%
New York base	392,105.19	516,431.69		397,986.21	976,807.16	1,691,136.97
Tax at 5 1/2%	21,565.79	28,403.74		21,889.24	53,724.39	93,012.53
Plus subsidiary capital tax	.50	.50		83.83	140.64	152.66
Total tax	\$ 21,566.29	\$ 28,404.24		\$ 21,973.07	\$ 53,865.03	\$ 93,165.19

(4) That in computing combined entire net income no deductions for intercompany profits were allowed;

(5) That the taxes were audited and stated on March 9, 1962 and applications for revision were filed on November 19, 1962;

(6) That for the years 1954, 1955, 1957 and 1958, Section 208.9 of the Tax Law read, in part, as follows:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire net income which the taxpayer is required to report to the United States treasury department, except as hereinafter provided."

(7) That the section was amended in 1959 as follows:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, or which the taxpayer would have been required to report, if it had not made an election under subchapter s of chapter one of the internal revenue code, except as hereinafter provided."

(8) That for the years involved Section 211.4 of the Tax Law read, in part, as follows:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, \* \* \* may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require \* \* \*. In the case of a combined report the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the report. In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated."

(9) That Reg. § 1.1502-31(b) of the Internal Revenue Code applicable to the years involved reads, in part, as follows:

"(b) Computations. In the case of affiliated corporations which make, or are required to make, a consolidated return, and except as otherwise provided in the regulations under section 1502:

"(1) Taxable income. The taxable income of each corporation shall be computed in accordance with the provisions covering the determination of taxable income of separate corporations, except:

"(i) There shall be eliminated unrealized profits and losses in transactions between members of the affiliated group and dividend distributions from one member of the group to another member of the group (referred to in the regulations under section 1502 as intercompany transactions); \* \* \*."

Upon the foregoing findings and upon all the evidence presented, it is hereby

**DETERMINED:**

(A) That "entire net income" as defined in Section 208.9 of the Tax Law means the net income that a corporation is required to compute in accordance with the Federal provisions covering the determination of taxable income of separate corporations;

(B) That Federal Regulation 1.1502-31(b)(1) eliminating unrealized profits and losses in transactions between members of an affiliated group applies only in those cases where a Federal consolidated return is filed;

(C) That there are no provisions in Article 9-A of the Tax Law that permit an affiliated group of taxpayers to report on a consolidated basis;

(D) That Section 211.4 of the Tax Law only provides for the eliminating of intercorporate dividends in computing combined entire net income;

(E) That the combined taxes as set forth in (3) above are affirmed as assessed;

(F) That the aforesaid taxes do not include taxes or other charges which are not legally due.

**Dated: Albany, New York**

**this 8th day of April 1969**

**THE STATE TAX COMMISSION**

/s/

**JOSEPH H. MURPHY**

**President**

/s/

**A. BRUCE MANLEY**

**Commissioner**

/s/

**MILTON KOERNER**

**Commissioner**

Mr. Edward Rook  
Mr. Nigel Wright  
Grolier, Inc.

This is one of the pending corporation tax cases transferred to this office by the Law Bureau, on March 25, 1969.

I have reviewed the determination prepared by the Corporation Tax Bureau and I am in agreement with it.

/s/

NIGEL G. WRIGHT  
NIGEL WRIGHT  
Hearing Officer

March 31, 1969

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DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Doran

OFFICE

FROM: Mr. Sullivan

DATE December 11, 1968

SUBJECT: Grolier, Incorporated

Attached for your review is a proposed determination in the above matter.

The above taxpayer and its affiliated corporations filed on a consolidated basis for Federal income tax purposes and on a combined basis for New York franchise tax purposes.

The taxpayer claims consolidated net income is the proper basis for reporting income under Article 9-A of the Tax Law for a group of corporations reporting on a combined basis.

The proposed determination affirms the taxes as assessed on a combined income basis, which does not allow as a deduction, unrealized profits in transactions between members of the affiliated group, as are allowed as a deduction in arriving at Federal consolidated net income.

The determination affirms the 1959 tax as originally audited and stated. After the formal hearing was held, the 1959 tax was corrected to allow a carryback loss from 1962.

*W. F. Sullivan*

W. F. Sullivan  
Sr. Tax Administrative Supervisor

WFS:MB

*Approved*  
*E. A. [Signature]* 12/12/68